

1
2
3
4
5
6
7
8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 HEATHER MAXIN, individually and on
13 behalf of all others similarly situated,
14 Plaintiff,
15 v.
16 RHG & COMPANY, INC.,
17 Defendant.

Case No.: 16-CV-2625 JLS (BLM)

**ORDER RE PROPOSED
SUPPLEMENTAL NOTICE**
(ECF No. 14)

18
19 Presently before the Court is the parties' [Proposed] Supplemental Notice to Class
20 Members ("Sup. Notice," ECF No. 14). The parties' submitted to the Court a proposed
21 supplemental notice, which the parties propose will be included on the opening page of the
22 settlement website. (Sup. Notice 2.) The notice informs the class members that their
23 deadline to submit a claim, submit a request to be excluded, or object to the class settlement
24 has been extended. (*Id.*) It also provides, "During [the objection] period, Class Counsel
25 will file Class Counsel's Fee Petition on or before Date." (*Id.*)

26 The Court finds the proposed supplemental notice is inadequate. First, the Court
27 declines to set a deadline for objections at this time. "The plain text of [Federal Rule of
28 Civil Procedure 23(h)] requires a district court to set the deadline for objections to

1 counsel's fee request on a date *after* the motion and documents supporting it have been
2 filed.” *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th Cir. 2010).
3 Therefore, Class Counsel must first file its fee motion before issuing the supplemental
4 notice. Second, the supplemental notice must inform the class members they have a right
5 to review the fee motion before deciding whether to opt-out of the settlement or object to
6 the fee motion. *See id.* at 993 (“The plain text of [Federal Rule of Civil Procedure 23(h)]
7 requires that any class member be allowed an opportunity to object to the fee ‘motion’
8 itself, not merely the preliminary notice that such a motion will be filed.”). The
9 supplemental notice should inform the class members how they may object to the fee
10 motion if they so choose. Third, the supplemental notice does not tell the class members
11 how they may review the fee motion (such as by clicking a link on the settlement website).
12 Although the supplemental notice adequately provides the contact information of Class
13 Counsel and the Claims Administrator, it does not make clear that the class members may
14 review the fee motion either through the website or by contacting Class Counsel for a copy.
15 Fourth, the supplemental notice does not refer to the original notice and it is unclear how
16 the two notices relate. The supplemental notice needs to inform the class members it merely
17 supplements the information the members previously received, the settlement of which has
18 been preliminary approved by the Court. The supplemental notice should also inform the
19 class members the fee motion is consistent with what was indicated in the original notice
20 the class members received (i.e. Class Counsel’s attorneys’ fees and costs are \$270,000).

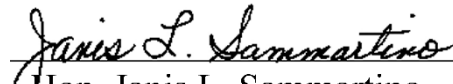
21 Finally, the Court finds the method of providing notice to the class members is
22 inadequate. The parties state they “believe that supplemental notice via the Settlement
23 Website, which is also accessible via a hyperlink on Defendant’s webpage, is the most
24 efficient and cost-effective method of notice.” (Sup. Notice 3.) While it may be true that
25 updating a website is cost-effective, the mere posting of the supplemental notice on the
26 settlement website is not “the best notice that is practicable under the circumstances”
27 Fed. R. Civ. P. 23(c)(2)(B). The Court previously approved of the parties’ method of
28 providing notice of the lawsuit to the class, which directly notified the class members of

1 the class action and provided them with a link to the settlement website,¹ and merely
2 posting an update on said website, without notifying the class members of the update, is
3 inadequate. The class members would not become aware of the supplemental notice if they
4 did not happen to check the website and see the update. Accordingly, the parties must
5 amend their method of notice.

6 Accordingly, the Court **ORDERS** Class Counsel to file its fee motion forthwith.
7 Subsequently, the parties **SHALL** file another proposed supplemental notice, taking into
8 consideration the Court's requirements listed above. The parties **SHALL** also propose
9 dates for: (1) the notification of the class members of the supplemental notice; (2) the
10 deadline for class members to object; (3) the deadline for Class Counsel to file a Motion
11 for Final Approval; and (4) a hearing date for said Motion. Finally, the Court **VACATES**
12 the Final Approval Motion hearing currently set for September 28, 2017 at 1:30 p.m. The
13 hearing will be continued to a later date. Once the Court receives the parties' updated
14 proposed supplemental notice, the Court will assess its adequacy and issue a schedule for
15 further proceedings.

16 **IT IS SO ORDERED.**

17 Dated: September 20, 2017


18 Hon. Janis L. Sammartino
19 United States District Judge
20
21
22
23
24

25 ¹ In its prior Order, the Court found the Parties agreed "to notify the Class by four distinct methods: '(1)
26 by mailing or emailing Direct Notice, (2) by establishing a Settlement Website and toll-free number, (3)
27 by providing notice to the Pharmacies that sell Defendant's Products and requesting that they post a copy
28 of the Short-Form Notice on their websites and in their stores, and (4) by Publication Notice' in USA
Today. . . . In particular, each notice method directs putative Class Members to the website
www.RHGsettlement.com" (ECF No. 11, at 14-15.)